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2007 MAY 16 A 10:08

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

JOHN P. HACKETT  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA.

GARRY DAMON WORTHEY,

\*

Plaintiff,

\*

\*

v.

\*

2:07-CV-63-WKW

\*

DIANNE HARRIS, SHERIFF, et al.,

\*

\*

Defendents.

\*

\*

\*

STATE OF ALABAMA  
COUNTY OF Escambia

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AFFIDAVIT

Before me, the undersigned Notary Public, personally appeared Garry Damon Worthey, who being known to me, and after first being duly sworn, deposes and says under oath as follows:

My name is Garry Damon Worthey, and I am 34 years  
Of age and competent to testify to the statements made herein that...

I Garry D. Worthey did follow all procedures in filing  
grievances:

Response to failing to Exhaust Administrative  
Remedies

1. After the altercation, when Sheriff Dianne Harris  
and Captain Albert McKee came to question me about  
the altercation, I stated verbally that I needed  
medical attention about my hand. Which they ignored.
2. I sent many request forms to both Mr. McKee and  
Mrs. Harris, the majority of the request never came  
back to me and never got answered.
3. Mr. McKee came to me one morning and said  
that they were not going to send me to a doctor  
for a wound I inflicted on myself during a  
fight. (The United States Supreme Court has ruled  
that the government must provide medical care  
for those whom it punishes by incarceration.)  
"Deliberate indifference" by prison personnel to an  
inmate's serious illness or injury constitutes cruel  
and unusual punishment under the Eighth Amen-  
ment. And whether indifference consists of  
prison doctors in their response to prisoners' needs  
or guards in "Denying or Delaying" access to

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Garry D. Worthey  
Signature of Affiant

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treatment, the inmates constitutional rights are violated.

4. Section 1983 suits do not require exhaustion of state remedies. (*Monroe v. Pape*, 365 U.S. 167, 81 Ct. 473, 5 L. Ed. 2d 492 and *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 102 S. Ct. 2557, 73 L. Ed.
5. (Also see requests already filed as exhibits in court file for Plaintiff.)

### Response to Lack of Medical Attention

1. From the time of the altercation to the day Mr. McKee finally sent me to a clinic. Dr. Smith of the Stabler Clinic stated, not much could be done at the clinic to fix my hand, cause I should have came sooner. The doctor took a x-ray and told me that I could possibly have a hairline fracture that the x-ray could not pick-up. Dr. Smith told the jail and myself, that I was to come back in 2 week if there was no change in my hand and swelling still there. Weeks went by and I'm still complaining about my hand to Mr. McKee, the nurse, and Mrs. Harris. Even after a reminder from the Nurse, Mr. McKee didn't send me to the doctor any sooner. (see inmate request form from Defendants' exhibit "E" dated 7-20-06 and 7-30-06)
2. Even after the Nurse at jail constantly reminds the jail about the condition of my hand, that it still hasn't healed and is still swollen after a month I still get no immediate attention. (see inmate request form from Defendants' exhibit "E" dated 8-11-06)
3. Dr. Smith told jail, I needed to see a specialist and have a MRI. Dr. Smith stated the MRI could determine more on condition of hand.
4. Mr. McKee stated, he had a meeting with Sheriff Dianne Harris about my hand. He said they were not going to pay for me to see a Specialist.

Garry D. Worthey  
Name of Affiant (print clearly)

  
Affiant's Signature

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(see request forms already in Plaintiff's file.)

5. MRI stated that there was a problem with hand & referred me to a Dr. McGowan. Which Defendants failed to add an MRI report. (see Plaintiff's court file pg 2 of MRI report.)

6. Prison official may not overrule a doctor's medical judgement concerning a prisoner's treatment. *Martinez v. Mancusi*, 443 F. 2d 421 (2d Cir.) and *Tolbert v. Eymann*, 434 F. 2d 625 (9th Cir.)

7. Mr. Mike's stated to me verbally, that the sooner I get sentenced that he would get me out of his jail. (Aug. 30<sup>th</sup> found guilty. Sept. 2nd sentenced Sept. 15<sup>th</sup> transferred to D.C.). Inmates in jail waiting for D.C. 60-90 days.)

### Response to Defendants' Qualified immunity

The Defendants should be held liable for damages, because they "knew or should have known" they were violating the Plaintiff's rights. Rights of which a reasonable person would have known at the times these acts were committed. Persons occupying public positions are expected to have knowledge of basic constitutional rights. Therefore, this Act should not be taken serious by the court as a "Defense"

Darry D. Worthy  
Name of Affiant (print clearly)

Darry Darry Worthy  
Affiant's Signature

Sworn to and subscribed before me a Notary Public in and for the said State of Alabama and County at large on this the 14 day of May, 2007.

My Commission Expires on: 1/12/2011.

Cy Otis  
NOTARY PUBLIC

**C E R T I F I C A T E   O F   S E R V I C E**

I hereby certify that I have served a copy of the foregoing attached Document(s) on the Respondent / Defendant by placing a copy of the same in The United States mail properly stamped and addressed to the following on this the 14 day of May, 2007.

Webb & Eley, P.C.  
7475 Halcyon Pointe Dr.  
P.O. Box 240909  
Montgomery, AL 36124

Office of the Clerk  
United States District Court  
P.O. Box 711  
Montgomery, AL 36101 -  
0211

*Darryl D. Worth*  
PETITIONER

**CC: FILED**

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OFFICE OF THE CLERK  
United States District Court  
P.O. Box 711  
MONTGOMERY, ALABAMA 36101-0711

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